

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EMPIRE COMMUNITY DEVELOPMENT, LLC,
Plaintiff,

19-cv-03892-JMA-AYS

-against-

VERIFIED REPLY TO
COUNTERCLAIM WITH
AFFIRMATIVE DEFENSES

VINCENT FERRARA, JOHN T. MATHER HOSPITAL,
TARGET NATIONAL BANK, CLERK OF SUFFOLK
COUNTY TRAFFIC & PARKING VIOLATIONS AGENCY,
SENCORE INC., AMERICAS BEST MEATS INC., LHR INC.,

Defendant(s).

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REPLY TO COUNTERCLAIM WITH AFFIRMATIVE DEFENSES

The plaintiff, Plaintiff, Empire Community Development, LLC (“Plaintiff”), by and through its attorneys, The Margolin & Weinreb Law Group, LLP, as and for its Verified Reply to the Counterclaim contained in the *Answer* filed on August 7, 2019 (the “Answer”), by Vincent Ferrara (“Defendant”) sets forth the following:

AS AND FOR DEFENDANT’S FIRST AND ONLY COUNTERCLAIM

1. Plaintiff denies the sole claim set forth in the Answer.
2. Each and every allegation not expressly admitted shall be deemed denied.

AS AND FOR PLAINTIFF’S FIRST AFFIRMATIVE DEFENSE

3. The Counterclaim fail to state a claim or cause of action against Plaintiff and, therefore, should be dismissed as a matter of law.

AS AND FOR PLAINTIFF’S SECOND AFFIRMATIVE DEFENSE

4. Plaintiff violated no duty nor breached any obligation imposed upon it by law, contract, agreement, statute or otherwise, owed to Defendant.

AS AND FOR PLAINTIFF'S THIRD AFFIRMATIVE DEFENSE

5. Defendant's claims are barred in whole or part by contract, including but not limited to the defenses afforded to Plaintiff under any contract with Defendant.

AS AND FOR PLAINTIFF'S FOURTH AFFIRMATIVE DEFENSE

6. Defendant directed, ordered, approved, authorized, and in all other respects ratified the acts and performance of Plaintiff, by reason of which conduct, Defendant is barred from any relief or recovery of any damages under the doctrine of estoppel.

AS AND FOR PLAINTIFF'S FIFTH AFFIRMATIVE DEFENSE

7. Plaintiff did not owe a fiduciary duty to Defendant.

AS AND FOR PLAINTIFF'S SIXTH AFFIRMATIVE DEFENSE

8. To the extent that Defendant has not suffered any damages as a direct proximate cause of Plaintiff's action, Defendant may not recover damages from Plaintiff.

AS AND FOR PLAINTIFF'S SEVENTH AFFIRMATIVE DEFENSE

9. Plaintiff possesses a defense founded upon documentary evidence.

AS AND FOR PLAINTIFF'S EIGHTH AFFIRMATIVE DEFENSE

10. Defendant's claims are barred in whole or in part by the parole evidence rule.

AS AND FOR PLAINTIFF'S NINTH AFFIRMATIVE DEFENSE

11. Defendant's claims are barred in whole or in part by the doctrine of ratification.

AS AND FOR PLAINTIFF'S TENTH AFFIRMATIVE DEFENSE

12. Defendant has not sustained any compensable damages attributable to Plaintiff.

AS AND FOR PLAINTIFF'S ELEVENTH AFFIRMATIVE DEFENSE

13. Defendant's claims are barred in whole or in part by the statute of frauds.

AS AND FOR PLAINTIFF'S TWELFTH AFFIRMATIVE DEFENSE

14. Defendant's counterclaim is barred due to the expiration of the statute of limitations.

AS AND FOR PLAINTIFF'S THIRTEENTH AFFIRMATIVE DEFENSE

15. Defendant's counterclaim is barred by the doctrine of waiver, laches, and unclean hands.

AS AND FOR PLAINTIFF'S FOURTEENTH AFFIRMATIVE DEFENSE

16. Plaintiff is not liable for any allegations of fraud committed by its predecessor-in-interest, even assuming arguendo that such allegations are true.

AS AND FOR PLAINTIFF FIFTEENTH AFFIRMATIVE DEFENSE

17. Plaintiff currently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, defenses available. Accordingly, Plaintiff reserves the right to assert additional defenses.

WHEREFORE, Plaintiff requests that Defendant's Answer with counterclaim be dismissed in its entirety, together with such other and further relief as the Court may deem just and proper.

Dated: Syosset, New York
August 26, 2019

THE MARGOLIN & WEINREB
LAW GROUP, LLP
Attorneys for Plaintiff

By: /s/Alan H. Weinreb
Alan H. Weinreb, Esq.
165 Eileen Way, Suite 101
Syosset, New York 11791
(516) 921-3838
alan@nyfclaw.com

To: Vincent Ferrara
Pro-Se Defendant
52 Pearl Avenue
Holtsville, NY 11742
(631) 891-8769

VERIFICATION BY ATTORNEY

ALAN H. WEINREB, an attorney duly admitted to practice before the courts of this state and associated with the attorneys of record for the plaintiff, affirms under the penalties of perjury that: I have read the foregoing Reply to Counterclaim with Affirmative Defenses and the same is true to my own knowledge except as to matters alleged to upon information and belief as to those matters I believe them to be true. The grounds of my belief as to matters not based upon personal knowledge are communications with plaintiff or officers and/or agents of plaintiff and copies of plaintiff's records in my possession. This affirmation is made by me because plaintiff is not in a county in which my firm has its office.

Dated: August 26, 2019
Syosset, New York

/s/ Alan H. Weinreb
ALAN H. WEINREB

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
EMPIRE COMMUNITY DEVELOPMENT, LLC,
Plaintiff,

19-cv-03892-JMA-AYS

AFFIRMATION OF
SERVICE

-against-

VINCENT FERRARA, JOHN T. MATHER HOSPITAL,
TARGET NATIONAL BANK, CLERK OF SUFFOLK
COUNTY TRAFFIC & PARKING VIOLATIONS AGENCY,
SENCORE INC., AMERICAS BEST MEATS INC., LHR INC.,

Defendant(s).

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

Tiffany L. Henry, an attorney duly admitted to practice law before the Courts of the State of New York and before this District Court, herby affirms the following under the penalties of perjury:

I am of full legal age, and reside in Nassau County, New York and I am not a legal party to this action. I do hereby swear that on August 26, 2019, I did serve a true copy of the Reply to Counterclaim with Affirmative Defenses annexed thereto, by First Class Mail, by depositing same enclosed in a postpaid, properly addressed envelope, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York to the addressees as indicated below:

Vincent Ferrara
Pro-Se Defendant
52 Pearl Avenue
Holtsville, NY 11742
(631) 891-8769

/s/ Tiffany L. Henry
Tiffany L. Henry, Esq.

Dated: August 26, 2019
Syosset, New York